

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated October 5, 2023, which determined the appellant was not eligible for the Persons with Disabilities designation because she did not meet the following criteria:

- Severe impairment
- Direct and significant restrictions to daily living activities
- Significant help required with daily living activities

The ministry also found the appellant was not one of the prescribed classes of persons eligible for Persons with Disabilities designation on alternative grounds. As there was no information or argument on this point, the panel considers it not to be an issue in this appeal.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (Act), section 2

Employment and Assistance for Persons with Disabilities Regulation (Regulation), section 2

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Part E – Summary of Facts**Relevant Evidence Before the Minister at Reconsideration****Request for Reconsideration (September 19, 2023) – summary**

The appellant states she is providing the following additional information because at the time of her persons with disability application she was unable to use a pen because of painful numbness in her fingers and hands.

She states she tries very hard to adhere to a daily routine in order to maintain self care but is failing miserably with even the bare minimum. She adds that she can go days without brushing her teeth or showering. It has been over three weeks since she's showered. She will probably only do so when her partner comes over and makes her. The appellant adds that she doesn't feel comfortable showering without anyone present, because her legs might give out. As well, due to anxiety, the thought of getting undressed and wet is enough to make her cry. It's probably been over two months since she's washed and brushed her hair. She just cannot make herself do it. She adds that she's been wearing the same dirty pair of jogging pants and hoodie for the last three months. If her partner doesn't change her clothes, she won't do it. She also hasn't shaved or done any other basic maintenance since her last shower, weeks ago.

The appellant adds that she eats very poorly. Her diet consists mainly of dry cereals. She cannot be bothered to feed herself, if she remembers to eat at all. Her partner calls her daily to remind her to eat, otherwise she won't. If she wanted to cook, it would take hours to prepare a simple meal. She cannot use a knife for more than fifteen minutes without her hands being in so much pain that it would take hours for the throbbing in her thumbs to go away. She states her hands are usually very cold and her fingers numb, so she cuts herself with a knife often. Even standing at the counter to prepare food is an issue as she never knows when her knees will give out. She tries not to stand with sharp or heavy objects, to prevent injuries. Lately her elbows and wrist have been so sore and painful that emptying the dishwasher takes about an hour plus a 20-minute break, when the pain becomes insufferable. Taking objects from the cupboard or shelves is a problem as her wrists are very weak and also give out frequently. For example, if she wants to eat around 6 pm, she needs to start prepping, pulling stuff from the fridge and cupboards at around 1 pm. She has given up on using a can opener and scissors or opening jars, so a quick opening of a can of food is not an option. Even if she manages to actually get some vegetables or meat in a pan, there's a 75% chance she will forget she's cooking and burn all her hard work (happens about twice weekly), which then results in eating burnt food when it is even possible - hence the mainly dry cereal, once daily diet.

The appellant adds that she is unable to regularly take her medications as she usually forgets to get her prescription refilled or picked up. When she does, she usually cannot afford them. Even when she has the funds, she would rather go without her drugs than go to the store and talk to strangers as it creates anxiety. As this time, she only has one of her five prescriptions. One has been waiting for pick up for over a month at the pharmacy, but she just cannot make herself go to pick it up.

The appellant also states her house is a mess. She hasn't cleaned the washroom in months; the ring around her bathtub is black and there's hair everywhere. She cannot remember when she washed the floor, mirror or counter/sink last. Her floor is littered with clothes she doesn't wear and she hasn't done laundry in months, as she cannot carry a basket of laundry up or down the stairs – she's afraid she'll fall. When her partner comes over they usually do the washing. She will try on the clean clothes because her hoodie and pants are filthy but then finds they're not comfortable so usually just puts the dirty jogging pants and hoodie back on and drops the other outfit back on the bedroom floor, where it will stay until her partner comes back and does laundry. This cycle has been going on for over 18 months.

The appellant also states she tries to keep up with the kitchen as much as possible since she understands food safety well. However, she mainly eats out of plastic bowls and cups. All her plates and glassware are broken because her hands will suddenly give way, and grabbing anything creates pain. In order for her to be able to carry things she needs to use both hands, stare at it and make a mental effort to keep holding it.

The appellant adds that she spends her days fighting with her body to actually do the things she needs to do. It is exhausting and she feels guilty and useless for failing at being an adult. She is constantly overwhelmed by the state of her house, but cannot bring herself to do anything about it. There is a constant war in her head and body that she is losing every day. She chooses daily between physical pain or inaction – neither is good.

The appellant adds that two times a day she leaves the house to walk her dog. They walk to the end of the street, but she doesn't trust her knees to last much further than the 700 metres without taking a 10-minute break. She tries not to venture too far since she never knows when her knees will give out; it's a matter of when, not if it happens. When she encounters stairs, she puts both hands on the railing and needs to be able to see the step and focus on her foot every step of the way.

As well, the appellant states she cannot go to the store alone. Even going to the pharmacy to pick up her prescription is something she would rather not do even though she is in

complete and maddening pain without her medication. She adds that when she goes to the store, she needs someone to carry the groceries and help her put them away. She tries to order pick up because she cannot stand people being close to her. She can carry a few pounds as long as she has lifting straps and is not carrying the items up or down stairs.

In addition, the appellant states she struggles with daily decisions, and lives in a constant brain fog. She has zero concept of time and rarely knows the day, time, month or year. Every little decision seems to be drawing all her energy and by the afternoon she is usually so overwhelmed that even the tiniest bump or unexpected event brings her to a full meltdown and in a spiral of guilt, shame and bordering panic. She adds that she struggles with sleep mainly because of the pain in her wrists, thumbs and knees, although the stress is definitely responsible for her insomnia as well. This lack of rest makes it hard for her to regulate her emotions and thoughts. On the worst nights she uses tensor bandages to immobilize her wrists and elbows, and pillows to elevate her shoulders and knees; however, this makes it uncomfortable and challenging to sleep.

All of this has left the appellant with a very depleted social circle and she now fears social outings. She has given up her social activities and stopped talking to most of her friends, leaving her very isolated.

She fears the physical pain she is currently living with will never go away.

Persons with Disabilities Application (application)

Ministry records state the appellant's doctor completed the medical and assessor reports for the Persons with Disabilities application (application) on July 6, 2023.

The following information (from the appellant's doctor) was provided by the ministry in the ministry record.

The appellant's diagnoses are:

- Mood disorder
- Anxiety and Depression (onset April 2021)
- Attention Deficit Hyperactivity Disorder (onset 1978)
- Chronic pain (onset 2018)
- Cervicalgia and upper limb radiculopathy – not yet diagnosed (onset September 2018)

Due to her conditions, the appellant has multiple psychological and physical symptoms such as poor concentration and memory, short attention span, difficulty planning,

frequent mood swings, and is irritable, inattentive, restless, disorganized, and reckless. She suffers from chronic headaches and pain in her neck, shoulders, hands, back, hips and knees. As a result of her impairments, since November 2022, she has had significant difficulty performing everyday tasks. Despite attempting all recommended treatment modalities, the appellant did not significantly improve, and they consider the appellant's impairments chronic and severe.

In the medical report, in assessing the appellant's basic functional skills, the doctor notes the appellant can walk four plus blocks unaided on a flat surface, can climb five plus steps unaided, can lift five to fifteen pounds and can remain seated for one to two hours.

In addition, the doctor indicates the appellant experiences significant deficits with the cognitive and emotional functioning: emotional disturbance, executive memory, motivation, impulse control, attention or sustained concentration. The doctor states the appellant has a lot of frustration and often impulsive, having falling-out with co-workers and with others at the gym. They also state that the appellant is having a hard time managing financially and may lose her house/declare bankruptcy.

In the assessor's report the doctor indicates that these deficits impact the appellant's cognitive and emotional functioning as follows:

- Four moderate impacts in the areas of bodily functions, emotion, attention/concentration, and other neuropsychological problems.
- Five minimal impacts in the areas of impulse control, executive, memory, motivation and other emotional or mental problems.

The doctor notes the appellant has difficulties with communication caused by cognition but also states her speaking and hearing are good and reading and writing is satisfactory. The doctor adds that the appellant has good functioning with her immediate social network and marginal functioning with her extended social networks.

However, the doctor also notes the appellant takes significantly longer than typical to manage the following daily living activities: grooming (brushing hair and washing hair with arms above shoulder height is difficult), laundry (due to pain and weakness in arms), basic housekeeping (due to pain and weakness in arms), carrying purchases home (due to arm pain and weakness), food preparation (small meals no problem but for kitchen work cannot manage large batches.), taking medication as directed (sometimes loses track of meds). Memory impairment and Attention Hyperactivity Deficit Disorder have made it difficult to assess her response to treatment as she loses track of her medication plan. It has been suggested to use a tablet organizer or blister pack from a pharmacy.

When asked what assistance is needed with daily living activities, the doctor notes, the appellant is able to pace herself and push through pain to manage household chores, shopping etc., but sometimes is unable to due to pain.

Information received after Reconsideration Decision

Appellant

Notice of Appeal (October 16, 2023)

The appellant did not provide reasons for the appeal in the Notice of Appeal.

Submission (summary) – endorsed by the appellant’ doctor

The appellant states the purpose of this letter is to clarify the severity of her condition and its impact on her daily living activities.

To Whom It May Concern (October 26, 2023)

The appellant states she has been diagnosed with

- Mood disorder – anxiety and depression
- Developmental disability – Attention Deficit Hyperactivity Disorder
- Chronic pain
- Cervicalgia and upper limb radiculopathy

The symptoms of these conditions include chronic daily pain, reduced mobility, mood swings, feelings of hopelessness, lack of motivation, reduced short-term memory, social isolation, insomnia causing daily fatigue, irritability, impulsivity, and inability to focus or concentrate. The appellant states the combined effects of these impairments severely restrict her daily living activities to the point where she requires significant assistance or takes considerably longer than normal to perform.

Severity of impairment

The appellant states that although her physician indicated, in the application that she can walk five blocks unaided, this would be under ideal circumstances, on flat level ground. Walking any distance outdoors takes at least two to three times longer than normal and requires frequent stops due to severe pain and fatigue, and concern that her knees will give out. She adds that she is able to climb five plus stairs using a handrail, but it takes at least two to three times longer and results in pain, which requires that she stop and rest before going on. Although her doctor indicated she can lift between five to fifteen pounds,

while she is capable of lifting this weight, she generally avoids lifting altogether as it only exacerbates her neck, shoulders and arm pain.

On the application the doctor indicates that she has significant deficits with executive functioning, memory, emotional disturbance, anxiety and depression, loss of motivation, lack of impulse control and an inability to focus or sustain concentration. They also indicate that she suffers moderate impacts in four areas of cognitive and emotional functioning, while five others have minimal impact. The appellant states this assessment is incorrect as bodily functions, emotion, attention, concentration and other neuropsychological problems all have a major impact on her functioning. In addition, impulse control, poor memory, lack of motivation and other emotional or mental problems (learning disability) have a moderate impact on her functioning. Combining these four major and five moderate impacted areas results in a very severe cognitive impairment with respect to social functioning.

Daily living activities

The appellant states her daily living activities are significantly restricted on a typical day. She suffers severe pain, mood swings, fatigue and lack of motivation. Every morning she struggles to get out of bed, a process that takes up to three times longer than normal. Showering, dressing and grooming can take at least three times longer than normal. Most days she is unable to perform these tasks.

The appellant states she is unable to adequately perform basic housekeeping, laundry or plan and cook regular healthy meals. Her limited mobility and chronic pain also limits her from walking to and from public transit, and shopping that involves bending or reaching for items on shelves, carrying bags, or standing in long checkout lines. Her severe anxiety also prevents her from going to stores alone.

Assistance with Daily Living Activities

The appellant states she requires weekly assistance from a friend to go shopping with her to help with her emotions and assist with lifting and carrying groceries home. While at

home she requires motivation, and weekly assistance with laundry, vacuuming, washing floors and any daily household tasks that require bending, lifting or is remotely physical. The pain in her shoulders and numbness in her hands prevents her from opening cans and jars, peeling

and cutting food and lifting heavy pots and pans. Therefore, she states she would benefit from assistance cooking and cleaning at least three times a week as she is unable to stand long enough in the kitchen to perform these.

The appellant adds that she requires regular assistance with her medications. She needs reminders to ensure that she takes them on time and to refill them before they run out.

Additional information

The appellant concludes that she suffers overwhelmingly with daily pain, depression, anxiety and fatigue. She is constantly overwhelmed and needs help with making appropriate decisions about her basic personal activities. As a result, she is socially isolated and stays mostly at home.

As well, the appellant states she required assistance to write this letter as she has difficulty focusing her thoughts and struggles expressing herself.

Endorsement by the appellant's doctor

The letter also states: " I agree that the foregoing statement is an accurate assessment of my patient's overall condition and her current circumstances. After reviewing this information, I can confirm that [the appellant's] physical and mental impairments will continue to persist and are severe enough to restrict her daily living activities to the point where she requires significant assistance or takes considerably longer than normal to perform. If there are any discrepancies noted between the information contained in the letter and [the appellant's] PWD application, then this letter should be given preference."

The letter is signed by appellant's doctor (November 3, 2023)

Letter from a Resource Disability Centre (November 2, 2023)

The writer states that contrary to the minister's ruling the appellant's ability to perform daily living activities is severely restricted.

The appellant has provided a letter, endorsed by her physician, detailing the degree of her restrictions and the amount and type of assistance she requires for her daily living activities.

In addition, it is critically important to consider section 8 of the British Columbia *Interpretation Act*, which governs all legislation and states that every enactment must be construed as being remedial and must be given such fair large and liberal construction

and interpretation as best ensures the attainment of its object. Therefore, section 8 of the *Interpretation Act* dictates that

the impairments resulting from the appellant's daily living activities and resulting support needs must be interpreted in a large and liberal manner rather than a restrictive manner.

In reference to the *Interpretation Act*, the Supreme Court of British Columbia ruled in *Hudson versus British Columbia* that the Act and Regulations are conferred pieces of legislation and as such must be interpreted keeping in mind the benevolent intent of the legislation with any ambiguity being resolved in favour of the appellant.

In *Garbutt versus British Columbia* the court ruled the decision of *Hudson* established that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two daily living activities in order to find that a person's ability to perform daily living activities is significantly restricted. The letter provided by the appellant and endorsed by her doctor establishes that she is significantly restricted in 1) basic mobility, 2) personal care 3) performing basic housekeeping and laundry duties, 4) cooking and preparing healthy meals, 5) shopping for needs, 6) managing medications and 7) social functioning.

The above considerations and a more generous review of the appellant's application and subsequent October 26, 2023 letter would indicate that severe medical impairments exist to the extent that the appellant requires significant assistance with her daily living activities and should therefore be granted the persons with disabilities designation.

- signed by a Resource Assistant.

Information and Advocacy Services

Ministry Submission (November 16, 2023)

The ministry states the letter endorsed by the appellant's doctor provides greater details about her symptoms. Following are the ministry's comments regarding this letter.

- While the doctor reported a moderate range of mobility and physical abilities in the application, this letter clarifies that these tasks take two to three times longer as the appellant has to take breaks due to her pain. She can lift five to fifteen pounds yet avoids lifting as it exacerbates her pain. She has difficulty with some fine motor skills.
- In the application, the assessment of the impact of the appellant's impairment on her daily cognitive and emotional functioning was "incorrect." She experiences major impacts in the areas of bodily functions, emotion, attention/concentration,

- and “other” neuropsychological problems. Impulse control, memory, motivation and other emotional/mental problems (learning disability) have a moderate impact. This is in line with the deficits identified by the doctor in another area of the application. These impacts combine to result in a “very severe cognitive impairment.”
- The appellant’s impairment prevents her from pursuing social activity and taking part in the community. She is socially isolated due to her impairment and stays mostly at home.
- More information is provided about how much longer it takes the appellant to complete daily living activities, with several activities taking three times longer due to the symptoms of her medical condition. This information suggests significant restriction in personal care, basic housekeeping, meals, and shopping.
- As a result of her symptoms and the restrictions to her daily living activities, the appellant requires weekly assistance with shopping, and housekeeping. Assistance is needed three times a week for meal preparation. She is unable to complete some activities related to fine motor skills (peeling, opening jars, etc.), without help. She feels constantly overwhelmed and needs help with making appropriate decisions about personal activities.
- Had the ministry had this information at the time of reconsideration, it is likely that a different decision would have been made.

Admissibility

The panel determined the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Did the ministry reasonably determine the appellant was not eligible for the Persons with Disabilities designation because she:

- does not have a severe impairment;
- does not have an impairment that directly and significantly restricts daily living activities; and
- does not require significant help with daily living activities?

Appellant Position

The appellant states she has been diagnosed with mood disorder, developmental disability, chronic pain and cervicgia and upper limb radiculopathy.

She argues that the symptoms of these conditions include chronic daily pain, reduced mobility, mood swings, feelings of hopelessness, lack of motivation, reduced short-term memory, social isolation, insomnia causing daily fatigue, irritability, impulsivity, and inability to focus or concentrate. The appellant also argues that the combined effects of these impairments severely restrict her daily living activities to the point where she requires significant assistance or takes considerably longer than normal to perform.

Ministry Position

At reconsideration, the ministry argued that the appellant's physical functional skills and reported independence with mobility did not show severe physical impairment. Additionally, a severe mental impairment was not shown based on the information about mental, emotional and social functioning, including being independent with daily living activities that would typically be difficult for someone with significant restrictions to their mental functioning. Respecting daily living activities, information about how often periodic restrictions occur or how long the appellant takes to do tasks was not provided to determine that the restrictions were significant, or that help is needed due to significant restrictions. In the ministry submission on appeal, the ministry states the letter endorsed by the appellant's doctor provides greater details about her symptoms and if the ministry had this information at the time of reconsideration, it is likely that a different decision would have been made.

Panel Analysis

Section 2(2) of the Act sets out the requirements that must be met for the minister to designate a person as a person with disabilities. One requirement is that the minister is satisfied the person has a severe mental or physical impairment.

Severe Mental or Physical Impairment

“Severe” and “impairment” are not defined in the legislation. The ministry considers the extent of any impact on daily functioning as shown by restrictions on physical abilities and/or mental functions. The Panel finds that an assessment of severity based on physical and mental functioning including any restrictions is a reasonable application of the legislation.

Mental Impairment

Ministry records show the doctor lists the appellant’s diagnoses as Mood Disorder, Anxiety and Depression, Attention Deficit Hyperactivity Disorder, Chronic pain, Cervicalgia and upper limb radiculopathy. The doctor considers the appellant’s impairments chronic and severe.

The letter, endorsed by the doctor, states that in regard to cognitive and emotional functioning, combining four major and five moderate impacted areas results in a very severe cognitive impairment with respect to social functioning.

In the request for reconsideration, the appellant states that due to anxiety, the thought of getting undressed and wet, to shower is enough to make her cry. She adds that even though she is in complete and maddening pain without her medication she would rather go without her drugs than go to the store and talk to strangers as it creates anxiety.

The panel finds the above information supports a severe mental impairment and finds the ministry decision that the minister was not satisfied the person has a severe mental or physical impairment, now unreasonable.

Physical Impairment

The letter, endorsed by the doctor, states walking any distance outdoors takes at least two to three times longer than normal and requires frequent stops due to severe pain and fatigue, and concern that her knees will give out. The appellant is able to climb five plus stairs using a handrail, but it takes at least two to three times longer and results in pain, which requires that she stop and rest before going on. While she is capable of lifting five to fifteen pounds weight, she generally avoids lifting altogether as it only exacerbates her

neck, shoulders and arm pain. In addition, the pain in her shoulders and numbness in her hands prevents her from opening cans and jars, peeling and cutting foods and lifting heavy pots and pans.

The panel finds the above information supports a severe physical impairment and finds the decision that the minister was not satisfied the person has a severe mental or physical impairment, now unreasonable.

Restrictions in Ability to Perform Daily Living Activities

Section 2(2) of the Act also states the minister must be satisfied that in the opinion of a prescribed professional, a severe physical or mental impairment directly and significantly restricts the person's ability to perform daily living activities continuously, or periodically for extended periods.

At least two activities must be restricted in a way that meet the requirements. To be significant, the restriction must be to a great extent, such as not being able to do the activities without a lot of support. "Continuous" means the activity is generally restricted all the time and "periodic for extended periods" means frequently or for longer periods of time.

The panel notes the letter, endorsed by the doctor, states the combined effects of the appellant's impairments severely restrict her daily living activities to the point where she requires significant assistance or takes considerably longer than normal to perform.

Daily living activities are defined in section 2(1)(a) and (b) of the Regulation, as shown below.

prepare own meals

The letter, endorsed by the doctor, states the appellant is unable to cook regular healthy meals and requires weekly assistance with lifting and carrying groceries home. While at home she requires motivation, and weekly assistance with any daily household tasks that require bending, lifting or is remotely physical. As the pain in her shoulders and numbness in her hands prevents her from opening cans and jars, peeling and cutting food and lifting heavy pots and pans, she would benefit from assistance cooking and cleaning at least three times a week as she is unable to stand long enough in the kitchen to perform these tasks.

In the request for reconsideration, the appellant states if she wanted to cook, it would take hours to prepare a simple meal. She cannot use a knife for more than fifteen minutes

without her hands being in so much pain that it would take hours for the throbbing in her thumbs to go away. She states her hands are usually very cold and her fingers numb, so she cuts herself with a knife often. Even standing at the counter to prepare food is an issue as she never knows when her knees will give out.

As the appellant's doctor states the appellant requires weekly assistance with any daily household tasks that require bending, lifting or is remotely physical and that she would benefit from assistance cooking and cleaning at least three times a week, the panel finds this supports a significant restriction periodically for extended periods.

shop for personal needs

Ministry records show that in the application, the doctor notes the appellant takes significantly longer than typical to carry purchases home, due to arm pain and weakness.

The letter, endorsed by the doctor, states the appellant's limited mobility and chronic pain limits shopping, which involves bending or reaching for items on shelves, carrying bags, or standing in long checkout lines. Her severe anxiety also prevents her from going to stores alone. She requires weekly assistance from a friend to go shopping with her to help with her emotions and assist with lifting and carrying groceries home.

As the appellant's doctor states the appellant takes significantly longer than typical to carry purchases home and requires weekly assistance from a friend to go shopping with her to help with her emotions and assist with lifting and carrying groceries home, the panel finds this evidence supports a significant restriction periodically for extended periods.

perform housework to maintain the person's place of residence in acceptable sanitary condition

Ministry records show that in the application, the doctor notes the appellant takes significantly longer than typical to manage laundry and basic housekeeping, due to pain and weakness in arms.

The letter, endorsed by the doctor, states the appellant is unable to adequately perform basic housekeeping and requires weekly assistance with laundry, vacuuming, washing floors and any daily household tasks that require bending, lifting or is remotely physical.

In the request for reconsideration, the appellant states her house is a mess. She hasn't cleaned the washroom in months; the ring around her bathtub is black and there's hair everywhere. She cannot remember when she washed the floor, mirror or counter/sink last. Her floor is littered with clothes she doesn't wear and she hasn't done laundry in

months, as she cannot carry a basket of laundry up or down the stairs – she’s afraid she’ll fall. When her partner comes over they usually do the washing.

As the appellant’s doctor states the appellant takes significantly longer than typical to manage laundry and basic housekeeping, due to pain and weakness in arms and requires weekly assistance with laundry, vacuuming, washing floors and any daily household tasks, the panel finds this evidence supports a significant restriction periodically for extended periods.

move about indoors and outdoors

The letter, endorsed by the doctor, states walking any distance outdoors takes at least two to three times longer than normal and requires frequent stops due to severe pain and fatigue, and concern that her knees will give out. The appellant is able to climb five plus stairs using a handrail, but it takes at least two to three times longer and results in pain, which requires that she stop and rest before going on. She requires weekly assistance from a friend to go shopping with her to help with her emotions and assist with lifting and carrying groceries home.

In the request for reconsideration the appellant adds that two times a day she leaves the house to walk her dog. They walk to the end of the street, but she doesn’t trust her knees to last much further than the 700 metres without taking a 10-minute break. She tries not to venture too far since she never knows when her knees will give out; it’s a matter of when, not if it happens. When she encounters stairs, she puts both hands on the railing and needs to be able to see the step and focus on her foot every step of the way.

As the appellant’s doctor states walking any distance outdoors takes at least two to three times longer than normal requiring frequent stops, and that the appellant requires weekly assistance from a friend to go shopping, the panel finds this evidence supports a significant restriction periodically for extended periods.

perform personal hygiene and self care

Ministry records show that in the application, the doctor states the appellant takes significantly longer than typical to manage grooming (i.e., brushing and washing hair) as arms above shoulder height is difficult.

The letter, endorsed by the doctor, states every morning the appellant struggles to get out of bed, a process that takes up to three times longer than normal. Showering, dressing

and grooming can take at least three times longer than normal. Most days the appellant is unable to perform these tasks.

In the request for reconsideration the appellant provides further details on her restriction and the assistance needed. She states she can go days without brushing her teeth or showering. It has been over three weeks since she's showered. She will probably only do so when her partner comes over and makes her. The appellant adds that she doesn't feel comfortable showering without anyone present, because her legs might give out. As well, due to anxiety, the thought of getting undressed and wet is enough to make her cry. It's probably been over two months since she's washed her hair, which is also the last time she's brushed it as well. She just cannot make herself do it. She adds that she's been wearing the same dirty pair of jogging pants and hoodie for the last three months. If her partner doesn't change her clothes, she won't do it. She also hasn't shaved or any other basic maintenance since her last shower, weeks ago.

As the appellant's doctor states the appellant takes significantly longer than typical to manage grooming, every morning she struggles to get out of bed (a process that takes up to three times longer than normal), showering, dressing and grooming can take at least three times longer than normal and most days the appellant is unable to perform these tasks, the panel finds this evidence supports a significant continuous restriction.

manage personal medication

Ministry records show that that in the application, the doctor states Memory impairment and Attention Hyperactivity Deficit Disorder have made it difficult to assess her response to treatment as she loses track of her medication plan. It has been suggested to use a tablet organizer or blister pack from a pharmacy.

In the request for reconsideration, the appellant states that she is unable to regularly take her medications as she usually forgets to get her prescription refilled or picked and she would rather go without her drugs than go to the store and talk to strangers as it creates anxiety. As this time, she only has one of her five prescriptions. One has been waiting for pick up for over a month at the pharmacy, but she just cannot make herself go to pick it up.

As the appellant's doctor states memory impairment and Attention Hyperactivity Deficit Disorder have made it difficult to assess her response to treatment as she loses track of her medication plan, the panel finds this evidence supports a significant continuous restriction.

make decisions about personal activities, care or finances

Ministry records show that in the application, the doctor stated that due to the appellant's health conditions, she has multiple psychological and physical symptoms such as difficulty planning and is inattentive and disorganized.

The letter, endorsed by the doctor, states the appellant is constantly overwhelmed and needs help with making appropriate decisions about her basic personal activities.

In the request for reconsideration, the appellant states she struggles with daily decisions, and lives in a constant brain fog. She has zero concept of time and rarely knows the day, time, month or year. Every little decision seems to be drawing all her energy and by the afternoon she is usually so overwhelmed that even the tiniest bump or unexpected event brings her to a full meltdown and in a spiral of guilt, shame and bordering panic.

As the appellant's doctor states that due to the appellant's health conditions, she has multiple psychological and physical symptoms such as difficulty planning, is inattentive and disorganized, is constantly overwhelmed and needs help with making appropriate decisions about her basic personal activities, the panel finds this evidence supports a significant continuous restriction.

relate to, communicate or interact with others effectively

Ministry records show that in the application, the doctor states the appellant has a lot of frustration and is often impulsive, having a falling-out with co-workers and with others at the gym. In the request for reconsideration, the appellant states, all her health issues have left her with a very depleted social circle and she now fears social outings. She has given up her social activities and stopped talking to most of her friends, leaving her very isolated.

The letter, endorsed by the doctor, states the appellant requires weekly assistance from a friend to go shopping with her to help with her emotions.

As the appellant's doctor states the appellant has a lot of frustration and is often impulsive, having a falling-out with co-workers and others, and the appellant requires weekly assistance from a friend to go shopping to help with her emotions, the panel finds this evidence supports a significant continuous restriction.

The panel finds, with the additional information, the ministry's determination that it is not satisfied that a severe mental or physical impairment directly and significantly restricts the

appellant's ability to perform daily living activities continuously, or periodically for extended periods, now unreasonable.

Help to Perform Daily Living Activities

Section 2(2) of the Act also requires that as a result of those restrictions, the person requires help to perform those activities and in order to perform them, the person requires an assistive device or the significant help or supervision of another person.

The letter, endorsed by the doctor, states the appellant requires weekly assistance from a friend to go shopping with her to help with her emotions and assist with lifting and carrying groceries home. While at home she requires motivation, and weekly assistance with laundry, vacuuming, washing floors and any daily household tasks that require bending, lifting or is remotely physical. As the pain in her shoulders and numbness in her hands prevents her from opening cans and jars peeling and cutting foods and lifting heavy pots and pans, she would benefit from assistance cooking and cleaning at least three times a week as she is unable to stand long enough in the kitchen to perform these tasks.

The panel finds that the above information supports that significant assistance is needed from another person.

In addition, ministry records show that in the application, the doctor states the appellant loses track of her medication plan and so it has been suggested to use a tablet organizer or blister pack from a pharmacy. The panel finds a tablet organizer meets the definition of "assistive device" in the legislation, as it assists the appellant manage personal medication.

The panel finds that with this new information the ministry's determination that it is not satisfied that assistance is required, is now unreasonable.

Conclusion

In conclusion, the panel finds the ministry's decision that the appellant was not eligible for Persons with Disabilities designation was not supported by the evidence.

The panel rescinds the ministry's decision. The appellant is successful on appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Act

Persons with disabilities

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal....

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "daily living activities",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

- (iii)shop for personal needs;
- (iv)use public or personal transportation facilities;
- (v)perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi)move about indoors and outdoors;
- (vii)perform personal hygiene and self care;
- (viii)manage personal medication, and

(b)in relation to a person who has a severe mental impairment, includes the following activities:

- (i)make decisions about personal activities, care or finances;
- (ii)relate to, communicate or interact with others effectively.

(2)For the purposes of the Act, "prescribed professional" means a person who is

(a)authorized under an enactment to practise the profession of

- (i)medical practitioner,
- (ii)registered psychologist,
- (iii)registered nurse or registered psychiatric nurse,
- (iv)occupational therapist,
- (v)physical therapist,
- (vi)social worker,
- (vii)chiropractor, or
- (viii)nurse practitioner...

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2

(2) [*persons with disabilities*] of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act*;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act* to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan* (Canada).

APPEAL NUMBER 2023-0318

Part G – Order

The panel decision is: (Check one) Unanimous By Majority

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred
back to the Minister for a decision as to amount? Yes No

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2023/11/25

Print Name

Kulwant Bal

Signature of Member

Date (Year/Month/Day)

2023/11/27

Print Name

Julie Iuvancigh

Signature of Member

Date (Year/Month/Day)

2023 /11/27